

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)
) Case No. 1:19-CR-0227
) (JLS) (MJR)
)
) Plaintiff,)
)
)
 vs.) March 8th, 2021
)
)
 JOSEPH BONGIOVANNI,)
)
 PETER GERACE, JR.,)
)
 (Via Zoom for Government))
)
)
 Defendants.)

**TRANSCRIPT OF ARRAIGNMENT
BEFORE THE HONORABLE MICHAEL J. ROEMER
UNITED STATES MAGISTRATE JUDGE**

APPEARANCES:

For the Plaintiff: JAMES P. KENNEDY, JR.
UNITED STATES ATTORNEY
BY: JOSEPH TRIPI, ESQ.
(Via Zoom for Government)
ASSISTANT UNITED STATES ATTORNEY
138 Delaware Avenue
Buffalo, NY 14202

For the Defendant: HARRINGTON & MAHONEY
BONGIOVANNI BY: JAMES HARRINGTON, ESQ.
JESSIE PYLE, ESQ.
(Via Zoom for Government)
70 Niagara Street
Third Floor
Buffalo, NY 14202

For the Defendant: JOEL DANIELS, ESQ.
GERACE (via Zoom for Government)
42 Delaware Avenue, Suite 700
Buffalo, NY 14202

Probation Officer: ANDRE MCCRAY

Audio Recorder: ROSALIE ZAVARELLA

1 APPEARANCES CONTINUED:

2 Transcriber: MEGAN E. PELKA, RPR
3 Robert H. Jackson US Courthouse
4 2 Niagara Square
Buffalo, NY 14202
(716) 364-6449

5 Proceedings recorded with electronic sound recording,
6 transcript prepared with computer-aided transcription.

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01:56PM 1 THE CLERK: We're here on the matter of Peter Gerace,
01:56PM 2 Jr. and Joseph Bongiovanni, case number 19-CR-227, for an
01:56PM 3 argument on a second superseding indictment. Counsel from the
01:56PM 4 government, please state your name for the record.

01:56PM 5 MR. TRIPI: Joseph Tripi for the United States.

01:56PM 6 THE CLERK: Thank you. Counsel for Defendant
01:57PM 7 Bongiovanni, please state your name for the record. You are
01:57PM 8 muted.

01:57PM 9 MR. HARRINGTON: James Harrington and Jessie Pyle.

01:57PM 10 THE CLERK: Thank you. And counsel for Defendant
01:57PM 11 Gerace, please state your name for the record.

01:57PM 12 MR. DANIELS: Joel Daniels.

01:57PM 13 THE CLERK: Thank you. And I note we have
01:57PM 14 Mr. Bongiovanni and Mr. Gerace on video and we also have the
01:57PM 15 U.S. Probation Officer Andre McCray on video.

01:57PM 16 THE COURT: Good afternoon. Before we start, I have
01:57PM 17 to read a statement.

01:57PM 18 Persons granted remote access to these proceedings are
01:57PM 19 reminded of the general prohibition against photographing,
01:57PM 20 recording or rebroadcasting of court proceedings. Violation
01:57PM 21 of these prohibitions may result in sanctions including
01:58PM 22 removal of court-issued media credentials, restricted entry to
01:58PM 23 future hearings, denial of entry to future hearings, or any
01:58PM 24 other sanctions deemed necessary by the Court, including
01:58PM 25 contempt of court.

01:58PM 1 Mr. Harrington, have you had an opportunity to explain to
01:58PM 2 Mr. Bongiovanni that he has the right to have this arraignment
01:58PM 3 held here in the courthouse and is he waiving that right and
01:58PM 4 agreeing to appear by videoconference today?

01:58PM 5 MR. HARRINGTON: I have and he does, Judge.

01:58PM 6 THE COURT: Mr. Daniels, have you had the opportunity
01:58PM 7 to explain to Mr. Gerace that he has the right to have this
01:58PM 8 arraignment held here in the courthouse, is he waiving that
01:58PM 9 right and agreeing to appear by video conference today?

01:59PM 10 MR. DANIELS: He is, Judge.

01:59PM 11 THE COURT: Thank you, sir. Okay. We're here for an
01:59PM 12 arraignment on a second superseding indictment. Mr. Tripi,
01:59PM 13 before we start, is the second superseding indictment -- does
01:59PM 14 that add new charges against Mr. Bongiovanni?

01:59PM 15 MR. TRIPI: It does, Your Honor and I am prepared as
01:59PM 16 I go through the indictment to indicate what charges are new.

01:59PM 17 THE COURT: Okay. Mr. Harrington, do you want to
01:59PM 18 just talk about the new charges and not go over the old
01:59PM 19 charges again?

01:59PM 20 MR. HARRINGTON: That's fine, Judge.

01:59PM 21 THE COURT: Okay.

01:59PM 22 MR. TRIPI: Want me to proceed one at a time, Your
01:59PM 23 Honor?

01:59PM 24 THE COURT: Yeah, if you just --

02:00PM 25 MR. TRIPI: A lot of the counts overlap, so it might

02:00PM 1 make sense to go through both defendants at the same time.

02:00PM 2 That's all.

02:00PM 3 THE COURT: Okay. If that's the way you want to
02:00PM 4 proceed, that's fine.

02:00PM 5 MR. TRIPI: Your Honor, the indictment alleged 18
02:00PM 6 counts total. Count 1 through 5, 8 and 10 through 18 charge
02:00PM 7 Mr. Bongiovanni. Counts 2 and 6 through 9 charge Mr. Gerace,
02:00PM 8 Jr.

02:00PM 9 The indictment begins with an introduction which describes
02:00PM 10 Mr. Bongiovanni, Mr. Gerace, some other individuals, as well
02:00PM 11 as some background regarding Mr. Bongiovanni and Gerace.

02:00PM 12 Count 1 charges Mr. Bongiovanni with conspiracy to defraud
02:00PM 13 the United States beginning in or about 2008 until about
02:01PM 14 August 2019. That has a maximum penalty of five years, a
02:01PM 15 \$250,000 fine. That charge is only against Mr. Bongiovanni.
02:01PM 16 That conspiracy is an agreement with Michael Masecchia and
02:01PM 17 others known and unknown. That count had a manner and means
02:01PM 18 which is laid out, as well as a number of overt acts regarding
02:01PM 19 that conspiracy.

02:01PM 20 Count 2 charges both Mr. Bongiovanni and Mr. Gerace. I'll
02:01PM 21 note, Your Honor, in the predecessor preceding indictment,
02:01PM 22 Mr. Gerace was referenced in that as co-conspirator 2. Count
02:01PM 23 2 is a new charge, although much of the information that was
02:02PM 24 in the prior indictment in Count 1 is contained in Count 2, so
02:02PM 25 a number of the overt acts, manner and means, et cetera, but

Count 2 charges both defendants with conspiracy to defraud the United States. It has a manner and means laid out. It incorporates the introduction by reference and that occurred between beginning in or about 2005 and continued until in or about February 2019. Again, the maximum penalty is five years and a \$250,000 fine. Two has a manner and means section as well as a number of overt acts.

Page 26 of the indictment has Count 3. That relates to Mr. Bongiovanni. Minimum is 10 years. Maximum is life. Conspiracy to distribute controlled substances is the charge and it's got a \$10 million fine maximum.

Count 4 is a public official accepting a bribe beginning in or about 2008 and continuing to in or about 2017. That charge relates only to Mr. Bongiovanni. It incorporates the introduction in Count 1 by reference. Maximum penalty is 15 years and a \$250,000 fine.

Count 5 is a public official accepting a bribe. That incorporates the introduction in Count 2. That charge begins in or about 2009 and continues to on or about June 6, 2019 and charges Mr. Bongiovanni. Maximum penalty is 15 years and a \$250,000 fine. That public official accepting a bribe also references Mr. Gerace, Jr. in the body of the charge, although he's not charged, obviously, in that count.

Count 6 charges Mr. Gerace paying a bribe to a public official. It incorporates the introduction in Count 2 by

reference. Again, it begins in or about 2009 and continues to on or about June 6, 2019, and that's in sum and substance for paying bribes to Mr. Bongiovanni.

Count 7 is a new charge. It relates entirely to Peter Gerace, Jr. That's for maintaining a drug-involved premises at 999 Aero Drive, Pharaoh's Gentlemen's Club, for manufacturing, distribution and using cocaine, cocaine base, methamphetamine, amphetamine also known as Adderall, marijuana and heroin in violation of 21 U.S. Code 856(a)(1) and Title 18, United States Code, Section 2. That date range of that charge is beginning in or about 2006 and continuing until on or about December 12th, 2019.

Count 8 is a new charge; charges both Mr. Bongiovanni and Gerace, Jr. with conspiracy to distribute controlled substances beginning in or about 2009 until in or about February 2019. The offense is in relationship to the conspiracy to possession with intent to distribute and to distribute cocaine, cocaine base, methamphetamine and amphetamine, also known as Adderall, and essentially maintaining the premises at 999 Aero Drive for manufacture, use and distribution of controlled substances.

Count 9 is a new count, relates solely to Mr. Gerace, Jr., charges him with conspiracy to commit sex trafficking beginning in or about 2009 and continuing until in or about 2017. That's punishable by a maximum penalty of life

02:06PM 1 imprisonment and a \$250,000 fine. Judge, if I neglected to
02:06PM 2 say it, Count 8, the maximum was 20 years and a maximum \$1
02:06PM 3 million fine.

02:06PM 4 Count 10, although it's a renumbered count, it is an
02:06PM 5 obstruction of justice count and it -- other than changing
02:06PM 6 some numbering of the count and incorporating the introduction
02:06PM 7 in Count 1 by reference in sum and substance -- it was
02:07PM 8 previously charged, but it is obstruction of justice related
02:07PM 9 to November 4th, 2014. All the obstruction of justice counts
02:07PM 10 are 20-year maximums, \$250,000 fine.

02:07PM 11 Count 11 is another obstruction of justice charge for
02:07PM 12 Mr. Bongiovanni related to January 28th, 2015.

02:07PM 13 Count 12 is another obstruction of justice charge related
02:07PM 14 to Mr. Bongiovanni that relates to on or about November 1st,
02:07PM 15 2018. Again, 20 years maximum, \$250,000 fine.

02:07PM 16 Count 13, another obstruction of justice count, relates to
02:07PM 17 Mr. Bongiovanni; maximum 20 years, maximum fine \$250,000.

02:07PM 18 Count 14, another obstruction of justice count, relates to
02:07PM 19 January 28th, 2019; same penalties.

02:07PM 20 Count 15, another obstruction of justice count for
02:07PM 21 Mr. Bongiovanni beginning on a date unknown but no later than
02:08PM 22 on or about February 1st, 2019 to on or about February 8th,
02:08PM 23 2019; same penalties as the other obstruction of justice
02:08PM 24 counts again. Other than some renumbering and incorporating
02:08PM 25 Counts 1 and 2 by reference, these were all previously

02:08PM 1 charged.

02:08PM 2 Count 16 is another obstruction of justice count relating
02:08PM 3 to Mr. Bongiovanni beginning on a date unknown but no later
02:08PM 4 than February 1st, 2019 and continuing to on or about June
02:08PM 5 6th, 2019. Again, maximum penalty is 20 years, \$250,000 fine.

02:08PM 6 Count 17 charges Mr. Bongiovanni with false statements on
02:08PM 7 March 29th, 2019. The maximum penalty is five years and a
02:08PM 8 \$250,000 fine.

02:08PM 9 Count 18 charges Mr. Bongiovanni with false statements.
02:08PM 10 Maximum penalty is five years and a \$250,000 fine.

02:09PM 11 The first forfeiture allegation seeks a money judgment of
02:09PM 12 \$250,000 from Mr. Bongiovanni. The second money judgment,
02:09PM 13 which is on the second forfeiture allegation, requests
02:09PM 14 forfeiture of firearms and ammunition pertaining to
02:09PM 15 Mr. Bongiovanni. Third forfeiture allegation seeks forfeiture
02:09PM 16 of real property at 999 Aero Drive in Cheektowaga and 5145
02:09PM 17 Luxor Lane in Clarence, real property relating to Mr. Gerace.
02:09PM 18 Again, the fourth forfeiture allegation also seeks forfeiture
02:09PM 19 of real property those same two premises, 999 Aero Drive
02:09PM 20 Cheektowaga, New York and 5145 Luxor Lane, Clarence, New York.

02:09PM 21 That's a summary of the indictment, Your Honor and
02:10PM 22 penalties.

02:10PM 23 THE COURT: Thank you, Mr. Tripi. Mr. Harrington,
02:10PM 24 sir, do you waive further reading of the indictment?

02:10PM 25 MR. HARRINGTON: I do, Judge.

02:10PM 1 THE COURT: And how does your client plead?

02:10PM 2 MR. HARRINGTON: Not guilty.

02:10PM 3 THE COURT: Mr. Daniels, sir, do you waive further
02:10PM 4 reading of the indictment?

02:10PM 5 MR. DANIELS: We do, Judge.

02:10PM 6 THE COURT: And how does your client plead?

02:10PM 7 MR. DANIELS: Not guilty, Judge.

02:10PM 8 THE COURT: Thank you, sir. We'll put a schedule in
02:10PM 9 place. I note for Mr. Bongiovanni there's already been
02:10PM 10 pretrial motions filed. Mr. Harrington, did you want to stick
02:10PM 11 to the schedule we're currently on or did you want an
02:10PM 12 opportunity to review the superseding indictment and file
02:10PM 13 additional motions?

02:10PM 14 MR. HARRINGTON: Judge, I believe that we'll need to
02:10PM 15 file additional motions. And actually, what has happened with
02:10PM 16 the superseding indictment has actually been helpful to us in
02:11PM 17 terms of because it spells out a little bit more in detail
02:11PM 18 some of what the government's theories and what they believe
02:11PM 19 their proof is, so that we think there's some discovery items
02:11PM 20 that we need to talk to Mr. Tripi about; also, some additional
02:11PM 21 discovery items in addition to everything he's provided.

02:11PM 22 So, I think that a new order would be in order for us,
02:11PM 23 Judge. I don't know how you want to handle it with Mr. Gerace
02:11PM 24 and Mr. Daniels.

02:11PM 25 THE COURT: Well, I think we can all now get on the

02:11PM 1 same schedule then, right? I think that's where we're going.

02:11PM 2 So, Mr. Tripi, how much time do you need to provide additional
02:11PM 3 discovery?

02:11PM 4 MR. TRIPI: Judge, obviously there are some new
02:11PM 5 charges. There will be additional discovery. If I could have
02:11PM 6 30 days to provide that discovery. If I need more time, I'll
02:12PM 7 ask the Court, but I think it can be done in 30 days.

02:12PM 8 THE COURT: Okay. Rosalie?

02:12PM 9 MR. DANIELS: Judge, if I might?

02:12PM 10 THE COURT: Sure, sure.

02:12PM 11 MR. DANIELS: Yeah. Joel Daniels for Mr. Gerace. If
02:12PM 12 we could have 60 days, it may make it a little easier for us.
02:12PM 13 We haven't had an opportunity at all to see any of the
02:12PM 14 discovery. I understand from speaking to Mr. Harrington that
02:12PM 15 there's a lot of boxes here, Judge.

02:12PM 16 THE COURT: Okay. Well, this is -- I think this
02:12PM 17 deadline is to get Mr. Tripi to give you the discovery. And
02:12PM 18 then, I'll allow you as much time as you want to review it and
02:12PM 19 then to prepare your motions, okay? So, I think that will be
02:12PM 20 the next step. Okay, Mr. Daniels?

02:12PM 21 MR. DANIELS: Okay. Thank you, Judge.

02:12PM 22 THE CLERK: Discovery will be due April 5th.

02:13PM 23 THE COURT: Okay. Now, Mr. Daniels, how long --
02:13PM 24 would you like 60 days to review the discovery and file your
02:13PM 25 motions?

02:13PM 1 MR. DANIELS: Yes, Judge. Thank you.

02:13PM 2 THE COURT: Okay. Is that okay with you,

02:13PM 3 Mr. Harrington?

02:13PM 4 MR. HARRINGTON: Yes, Judge.

02:13PM 5 THE CLERK: June 7th.

02:13PM 6 THE COURT: Mr. Tripi, how long would you like to

02:13PM 7 file a response?

02:13PM 8 MR. TRIPI: Because I'll be responding to both, Your

02:13PM 9 Honor. Could I have 30 days?

02:13PM 10 THE COURT: Sure.

02:13PM 11 THE CLERK: July 7th.

02:13PM 12 MR. HARRINGTON: Judge, before you go further,

02:13PM 13 Mr. Daniels and I had talked about it. I think that what he

02:13PM 14 meant, which is not clear, is that he would need 60 days to

02:13PM 15 review the discovery. I think he needs some additional time

02:13PM 16 to prepare his motions. Am I correct, Joel?

02:13PM 17 MR. DANIELS: That may be a good suggestion.

02:13PM 18 MR. HARRINGTON: So, maybe if he had another -- maybe

02:13PM 19 90 days would be maybe --

02:13PM 20 THE COURT: Okay. Well, we'll keep the 30 days for

02:14PM 21 discovery. Now we're going to go 90 days for motions,

02:14PM 22 Rosalie.

02:14PM 23 THE CLERK: Okay. That will be July 7th. And then?

02:14PM 24 THE COURT: Then 30 days for the government to

02:14PM 25 respond.

02:14PM 1 THE CLERK: August 9th.

02:14PM 2 THE COURT: And then we'll give defendants two weeks

02:14PM 3 to reply.

02:14PM 4 THE CLERK: August 23rd.

02:14PM 5 MR. TRIPI: Judge, may I sur-reply if applicable?

02:14PM 6 THE COURT: Well, why don't we cross that bridge when

02:14PM 7 we get there.

02:14PM 8 MR. TRIPI: All right. I'll do it in the response if

02:14PM 9 necessary.

02:14PM 10 THE COURT: Okay. And set a date for oral argument.

02:14PM 11 THE CLERK: September 14th at 10:30.

02:15PM 12 MR. TRIPI: That's fine.

02:15PM 13 THE CLERK: Thank you.

02:15PM 14 THE COURT: Is that good with you, Mr. Harrington?

02:15PM 15 MR. HARRINGTON: Yes, Judge.

02:15PM 16 THE COURT: Mr. Daniels?

02:15PM 17 MR. DANIELS: It is, Judge. Thank you.

02:15PM 18 THE COURT: Okay. And right now, unless somebody

02:15PM 19 thinks it should be different, that will be by Zoom, okay? We

02:15PM 20 don't know where the future is going to take us with this,

02:15PM 21 okay? All right.

02:15PM 22 MR. TRIPI: Your Honor, may I raise just one thing

02:15PM 23 before I ask to exclude time and --

02:15PM 24 THE COURT: Okay.

02:15PM 25 MR. TRIPI: -- just to point out that on the current

02:15PM 1 motions that Mr. Harrington had filed, replies were due
02:15PM 2 March 9th and oral arguments were due March 16th. I
02:15PM 3 understand there's more discovery and there's certain things
02:15PM 4 that have changed and he's going to have to review that and
02:15PM 5 make certain responses or motions, excuse me, but I think
02:16PM 6 there may be certain portions of those motions that have
02:16PM 7 already been filed that are still ripe, I guess, for argument,
02:16PM 8 that sort of will permeate through the case. Should we deal
02:16PM 9 with those now or --
02:16PM 10 THE COURT: I thought what we just agreed on was that
02:16PM 11 we're going to start over, right? Mr. Harrington is going
02:16PM 12 to -- if he wants to reassert these motions, he'll reassert
02:16PM 13 them with the current batch of motions. Is that right,
02:16PM 14 Mr. Harrington?
02:16PM 15 MR. HARRINGTON: Yes, Judge.
02:16PM 16 THE COURT: That's what I prefer to do. I don't want
02:16PM 17 to break it up.
02:16PM 18 MR. TRIPI: Okay, Judge. I was just making sure we
02:16PM 19 weren't supplementing what was already filed. We're starting
02:16PM 20 over?
02:16PM 21 THE COURT: Starting over. Okay. Now, I'll hear
02:16PM 22 from you, Mr. Tripi, on Speedy Trial.
02:16PM 23 MR. TRIPI: Yes, Your Honor. I'd ask that the time
02:16PM 24 from today's date until the defense motion deadline, which is
02:17PM 25 July 7th, 2021, be excluded in the interest of justice in the

1 interest of effective assistance of counsel. Counsel for
2 Mr. Bongiovanni already has a lot of discovery that they'll be
3 reviewing. In addition, he'll be obtaining more discovery and
4 they'll be assessing that discovery in light of the second
5 superseding indictment which did, although has a lot of the
6 same charges, does add some new charges and, of course, adds a
7 co-defendant.

8 As it relates to Mr. Gerace's counsel, Mr. Daniels,
9 obviously, until a few days ago, there were no charges pending
10 against Mr. Gerace. So, there's been no discovery previously
11 provided to Mr. Daniels. So, he'll have to obtain all the
12 discovery that was previously made available and provide it to
13 Mr. Bongiovanni plus any additional discovery that is
14 generated in the case.

15 We're going to be providing that on the deadline that the
16 Court had set of April 5th. There is voluminous discovery.
17 We are putting it in a searchable, reviewable format. This is
18 the nature -- this is the type of case though, I will say,
19 that investigation will continue. So, there may be additional
20 items that come in after that date and we understand our
21 obligations under Rule 16(c). We'll keep providing discovery
22 on a continuing basis.

23 I'd ask that, for those reasons though, for defense
24 counsel to review the discovery, consult with their clients,
25 assess that discovery in light of the second superseding

02:18PM 1 indictment, that time be excluded from the Speedy Trial Act
02:18PM 2 clock until July 7th, 2021 for the defense filing of motions,
02:18PM 3 for effective assistance of counsel, for continuity of counsel
02:18PM 4 and for all those reasons, it would outweigh both of the
02:18PM 5 defendants' and the public's right to a more speedy trial
02:18PM 6 pursuant to Title 18 U.S. Code 3161(h)(7)(A) and
02:18PM 7 3161(h)(7)(B)(iv) and I'd ask that an order of exclusion be
02:19PM 8 entered to that effect.

02:19PM 9 THE COURT: Mr. Harrington?

02:19PM 10 MR. HARRINGTON: We agree, Judge.

02:19PM 11 THE COURT: Mr. Daniels?

02:19PM 12 MR. DANIELS: No objection, Judge.

02:19PM 13 THE COURT: For the reasons stated by the government,
02:19PM 14 the Court finds that the ends of justice served by the request
02:19PM 15 for continuance outweigh the best interest of the defendants
02:20PM 16 and the public in a speedy trial and the time between today
02:20PM 17 and July 7th, 2021 shall be excluded from the Speedy Trial
02:20PM 18 clock.

02:20PM 19 Mr. Bongiovanni has been released on conditions since the
02:20PM 20 original indictment. I know of no problems with that, so
02:20PM 21 he'll continue on conditions. And Mr. Gerace was released on
02:20PM 22 conditions by the magistrate judge in Florida. I am going to
02:20PM 23 go through those conditions with Mr. Gerace quickly just so --
02:20PM 24 to make sure we're all on the same page here.

02:20PM 25 MR. DANIELS: Judge, if I might?

02:20PM 1 THE COURT: Yes, sir.

02:20PM 2 MR. DANIELS: I didn't meant to interrupt the Court.

02:20PM 3 The conditions were set by the magistrate judge in Fort

02:20PM 4 Lauderdale. We did object to several of the conditions and

02:20PM 5 explained that we would revisit those most likely when

02:20PM 6 Mr. Gerace was transferred here to Buffalo or came up to

02:21PM 7 Buffalo. I understand the Court wants to go through those. I

02:21PM 8 do have some objections to several of them and I just want to

02:21PM 9 raise that as the Court goes through them.

02:21PM 10 THE COURT: Okay. Mr. Daniels, here's my

02:21PM 11 understanding of the statute and the case law in this area,

02:21PM 12 okay?

02:21PM 13 MR. DANIELS: Yes.

02:21PM 14 THE COURT: The judge down there set these

02:21PM 15 conditions, okay? If you're opposed to any of those

02:21PM 16 conditions, you need to appeal that to the district court

02:21PM 17 judge and in this case, that's Judge Sinatra, okay? The way

02:21PM 18 the statute reads, I don't review what the magistrate judge

02:21PM 19 down in Florida did, okay? And --

02:21PM 20 MR. DANIELS: Well, we did -- again, for the -- I'm

02:21PM 21 sorry.

02:21PM 22 THE COURT: I could cite you a couple cases which I

02:21PM 23 think support that.

02:21PM 24 MR. DANIELS: I understand.

02:21PM 25 THE COURT: There's *United States vs. Cisneros*, 328

1 F.3d 610, (10th Cir. 2003), *United States vs. Pickens* which is
2 the District of New Hampshire December 21st, 2011. And so,
3 your option to appeal anything or to question anything that
4 the magistrate judge did in Florida is to appeal under 3145 to
5 District Judge Sinatra, okay?

6 MR. DANIELS: I understand Judge. Just for the
7 record, I just wanted to state very briefly what our concerns
8 were. And again, I did raise that before the magistrate
9 judge. I don't mean to impose on the Court at all, but there
10 are some issues that were fairly important to Mr. Gerace. If
11 I may, Judge, I'll go through them very quickly.

12 THE COURT: Sure.

13 MR. DANIELS: If I can. Thank you. We have to
14 surrender our passport. I don't have it yet. I should have
15 it within the next few days. As soon as I do, I will see that
16 that's given to the clerk's office.

17 Number two, we're supposed to stay away, required to not
18 have any contact with witnesses. We're only aware of one that
19 was mentioned, that's Kathleen Nigro, also known as -- Katrina
20 Nigro, I'm sorry, also known as Katrina Lee. Briefly, she'd
21 be the last person that Mr. Gerace would want to have any
22 contact with. I don't think he'd want to be in the same
23 hemisphere with her. They were divorced five years ago and
24 she's caused a lot of difficulty and trouble for him over the
25 last five years. She doesn't seem to want to stop, but she's

1 very, very active on Facebook and she's had a lot of harmful
2 attacks against him on Facebook as recently as the last few
3 days. And we would ask that the Court perhaps advise the
4 government to direct her to discontinue and refrain from those
5 attacks. And if we have to raise that before Judge Sinatra,
6 we will.

7 Most importantly, Judge, Mr. Gerace is the sole owner of
8 his business, that's Pharaoh's Gentlemen's Club, or as the
9 media refers to it, as a strip club, of course. He's owned it
10 for three years. It's a very successful business. He has
11 taken some financial hits because of COVID in the last year,
12 but it seems to be recovering and doing quite well.

13 The business opens at noon and it stays open until the
14 early morning hours, depending, of course, on how long they
15 can open with the government's COVID restrictions. And
16 according to the conditions of release, he is not allowed to
17 go there. He is not allowed to go to his business. This is
18 his sole source of income.

19 And all we ask for is the ability to go and just do some
20 office work between 9 in the morning and 12 noon. That's
21 before anybody even gets there. That's before the employees
22 get there. There's over 100 employees and they don't start
23 coming in until after noon. So, if he could be there between
24 nine in the morning and noon just to do some paperwork and the
25 rest of the time he won't be there. And that business runs

02:26PM 1 seven days a week, because that's a very harsh, almost unfair
02:26PM 2 restriction on him not to be allowed to go to his business.
02:26PM 3 That's a rather hard on him, Judge.

02:26PM 4 Again, we raised these issues. I understand the
02:26PM 5 magistrate in Florida may not have been familiar with all
02:26PM 6 these matters because she's a native of Lauderdale and is not
02:26PM 7 here, but I bring that up to the Court's attention because
02:27PM 8 those are fairly restrictive for Mr. Gerace and ask for any
02:27PM 9 consideration the Court can do here, Judge. Thank you.

02:27PM 10 MR. TRIPI: Well, Judge, that's the location where
02:27PM 11 he's charged with maintaining a drug-involved premises and
02:27PM 12 conspiring to commit sex trafficking. So, that was -- in lieu
02:27PM 13 of moving for detention in a case where we had very strong
02:27PM 14 dangerousness arguments, we instead landed on that restriction
02:27PM 15 and the magistrate judge in Florida agreed.

02:27PM 16 THE COURT: Yeah. And as I stated, Mr. Daniels, the
02:27PM 17 way I read the statute and the case law, I don't have the
02:27PM 18 authority to undo what she did, Judge Sinatra would, and you
02:27PM 19 have to appeal to him, okay?

02:27PM 20 MR. DANIELS: I understand.

02:28PM 21 THE COURT: Okay. All right. So, he is to report to
02:28PM 22 pretrial services directed by U.S. Probation Office. He's to
02:28PM 23 surrender any passport or passport card to the clerk of court.
02:28PM 24 He is to surrender any international travel documents to
02:28PM 25 appropriate authorities. He is not to obtain a new passport

02:28PM 1 or other international travel documents. His travel is
02:28PM 2 restricted to the Western District of New York unless
02:28PM 3 permission is granted to travel elsewhere. He is to remain at
02:28PM 4 a verifiable address approved by pretrial services. He's to
02:28PM 5 avoid all contact with co-defendants and defendants in related
02:28PM 6 cases unless approved by pretrial services. He is to avoid
02:28PM 7 all contact with directly or indirectly with any person who
02:29PM 8 are or who may become a potential victim or witness in this
02:29PM 9 case.

02:29PM 10 He is not to possess a firearm or destructive device. He
02:29PM 11 is to refrain from any use of alcohol. He is to refrain from
02:29PM 12 any use or unlawful possession of a narcotic drug unless
02:29PM 13 prescribed. He is to submit to drug and alcohol testing and/
02:29PM 14 or treatment as directed by pretrial services, including co-
02:29PM 15 payment. He is to refrain from obstructing or attempting to
02:29PM 16 obstruct or tamper in any fashion with the efficiency and
02:29PM 17 accuracy of any prohibited substance testing which is required
02:29PM 18 as a condition of release.

02:29PM 19 He is to abide by the conditions of a location monitoring
02:29PM 20 program through GPS to be monitored electronically via home
02:30PM 21 detention and restricted to his residence at all times except
02:30PM 22 for employment, education, religious services, medical,
02:30PM 23 substance abuse or mental health treatment, attorney visits,
02:30PM 24 court appearance and court-ordered obligations. He will
02:30PM 25 contribute to the cost of services as directed by the pretrial

02:30PM 1 services office. He is to refrain from obstructing or
02:30PM 2 attempting to obstruct or tamper in any fashion with the
02:30PM 3 electronic monitoring which is required as a condition of
02:30PM 4 release. He is to report within 72 hours to pretrial services
02:30PM 5 any contact with any law enforcement personnel including but
02:30PM 6 not limited to any arrest, questioning or traffic stop.

02:30PM 7 He shall not have any contact with Katrina Nigro. He
02:30PM 8 shall not visit Pharaoh's Gentlemen's Club located at 999 Aero
02:31PM 9 Drive, Cheektowaga, New York and is to stay away from any
02:31PM 10 other strip clubs.

02:31PM 11 Mr. Gerace, do you understand those conditions of release,
02:31PM 12 sir? You're on mute, sir. Do you know how to take yourself
02:31PM 13 off mute?

02:31PM 14 THE DEFENDANT: Yes, I do, Your Honor.

02:31PM 15 THE COURT: Okay. Do you understand those
02:31PM 16 conditions, sir?

02:31PM 17 THE DEFENDANT: Yes, I do, Your Honor.

02:31PM 18 THE COURT: Okay. Very good. So, as I said,
02:31PM 19 Mr. Daniels if you want any of those changed, what the
02:31PM 20 magistrate judge did in Florida, you'll have to appeal that to
02:31PM 21 Judge Sinatra.

02:31PM 22 I don't know if this happened before in this case or down
02:31PM 23 in Florida, but pursuant to Federal Rule of Criminal Procedure
02:31PM 24 5(f), I direct the government to comply with its obligation
02:31PM 25 under *Brady vs. Maryland* and its progeny to disclose to

02:31PM 1 defense all information, whether admissible or not, that is
02:31PM 2 favorable to the defendant, material either to guilt or to
02:32PM 3 punishment and known to the prosecution, the government.
02:32PM 4 Possible consequences for non-compliance may include dismissal
02:32PM 5 of individual charges or the entire case, exclusion of
02:32PM 6 evidence, a professional discipline or court sanctions on the
02:32PM 7 attorneys responsible.

02:32PM 8 I will be entering a written order more fully describing
02:32PM 9 this obligation and possible consequences of failing to meet
02:32PM 10 and I direct the government to review and comply with that
02:32PM 11 order. Mr. Tripi, do you confirm on the behalf of the
02:32PM 12 government that the government understands its obligations and
02:32PM 13 will fulfill them?

02:32PM 14 MR. TRIPI: Yes, Your Honor.

02:32PM 15 THE COURT: Okay. Mr. Tripi, is there anything else
02:32PM 16 today?

02:32PM 17 MR. TRIPI: Not today, Your Honor.

02:32PM 18 THE COURT: Mr. Harrington?

02:32PM 19 MR. HARRINGTON: No, sir.

02:32PM 20 THE COURT: Mr. Daniels?

02:32PM 21 MR. DANIELS: No, Your Honor.

02:32PM 22 THE COURT: Officer McCray?

02:32PM 23 P.O. MCCRAY: No, Judge. Thank you.

02:32PM 24 THE COURT: All right. Have a good day and stay
02:32PM 25 safe, okay?

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MR. TRIPI: Thank you, Your Honor.

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MR. DANIELS: Thanks, Judge.

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(Proceedings concluded.)

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CERTIFICATE OF TRANSCRIBER

In accordance with 28, U.S.C., 753(b), I certify that this is a true and correct record of the proceedings held in the United States District Court for the Western District of New York before Honorable Judge Michael J. Roemer, on March 8th, 2021.

s/ Megan E. Pelka, RPR

Megan E. Pelka, RPR

Transcriber